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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

FLEMMING KRISTENSEN,

Plaintiff,

v.

CREDIT PAYMENT SERVICES INC., et al.,

Defendants.

Case No. 2:12-CV-00528-APG (PAL)

**DEFENDANTS' NOTICE OF  
SUPPLEMENTAL AUTHORITY**

Defendants MidCountry Bank (referred to herein as its division "Pioneer Services" (improperly named "Pioneer Financial Services, Inc." in Plaintiff's First Amended Class Action Complaint)), Credit Payment Services, Inc., LeadPile LLC, and CNU Online Holdings, LLC (improperly named "Enova International, Inc." in Plaintiff's First Amended Class Action Complaint) submit this Notice of Supplemental Authority to inform the Court of three recent opinions.

Two of those opinions granted a defendant's motion for summary judgment because plaintiff could not establish defendant was vicariously liable for breaching the Telephone Consumer Protection Act ("TCPA"): (1) *Makaron v. GE Sec. Mfg., Inc.*, 2015 WL 3526253 (C.D. Cal. May 18, 2015) (attached as Exhibit A), and (2) *Siding and Insulation Co. v. Alco Vending*,

1 *Inc.*, 2015 WL 1858935 (N.D. Ohio Apr. 22, 2015) (attached as Exhibit B). Further, both  
 2 opinions limit the scope of vicarious liability under the TCPA to principles of actual authority,  
 3 apparent authority, and ratification.

4 The third opinion granted a defendant's Rule 12(b)(6) motion to dismiss because "the  
 5 Complaint ha[d] virtually no allegations regarding the relationship between" the defendant and  
 6 the party that directly violated the TCPA – *Panacci v. AI Power, Inc.*, 2015 WL 3750112 (N.D.  
 7 Cal. June 15, 2015) (attached as Exhibit C). There the Complaint did "not show that [the  
 8 defendant] controlled, authorized, or even knew about [the] phone calls or that [the defendant]  
 9 had any control over" the direct violator. Further, the opinion limited the scope of vicarious  
 10 liability to principles of actual authority, apparent authority, ratification, and alter ego (a theory  
 11 not advanced by Kristensen).

12 Respectfully submitted this 29th day of June, 2015.

13 /s/ Chad R. Fears

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 28 *Holdings, LLC, incorrectly sued as Enova*  
*International, Inc.*

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On June 29, 2015, I caused to be served a true and correct copy of the foregoing **DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY** upon all counsel of record registered with the United States District Court's CM/ECF Program the following by the method indicated:

- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).
- ☐ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- ☐ **BY PERSONAL DELIVERY:** by causing personal delivery via messenger service of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

/s/ Tonya C. Stephenson

An Employee of Snell & Wilmer L.L.P.

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